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1 Q So it could have been marked?

2 A As I stated before, it is conceivable. Yes, sir.

3 Q So that wasn't exactly right, was it?

4 A I suppose it would have been more clear to say that it was
5 not obviously marked, in that it was not apparent to me when it
6 was held up to me that there was anything marking it. There
7 was no box, no sleeve, no indications that -- of what it was
8 doing there.

9 Q Did you -- did you inquire?

10 A I asked Agent Jakeway to check it out.

11 Q You asked him to check out what was on the tape?

12 A Yes, sir. It seemed out of place to us.

13 Q But not to check out -- you didn't check out what was on --
14 on -- on the cassette itself?

15 A No, sir. I did not.

16 Q Again, later on in paragraph 9, you also say -- and I
17 quote:

18 "The video cassette was unmarked and was in an
19 incongruous place. Therefore, I asked Agent Jakeway
20 to find out if it was possible evidence of a crime of
21 attempted suicide."

22 Is that true?

23 A Yes, sir.

24 Q Well, but you don't know whether it was marked or not, do
25 you? That's not actually correct, is it?

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1 label on the video cassette tape.

2 Q Does that appear to be the same as that label there?

3 A Other than the orientation being horizontal and vertical,
4 yes, sir.

5 Q Have you ever seen that label on that tape before?

6 A Every time you showed it to me during deposition, but not
7 the night of the event. No, sir.

8 (Side conversing)

9 Q In fact, you didn't really look at the tape at all that
10 night?

11 A No, sir. I was very concentrated on the firearms.

12 Q You were worried about the firearms?

13 A Yes, sir.

14 Q And you were worried about getting the firearms out of the
15 building?

16 A Yes, sir. We had a very intense situation and I was very
17 focused on the guns.

18 Q In fact -- speaking of that intense situation -- when you
19 came in the room and cleared the room -- I take it that's what
20 you call it. Is that correct?

21 A Yes, sir.

22 Q To make sure it's safe to be in. Where -- where was Mr.
23 Shepherd -- Soldier Shepherd?

24 A Soldier Shepherd was on the bed, sir.

25 Q And did you see him right away?

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1 A If that's how you choose to interpret it, sir. My answer
2 is that I did not observe any markings.

3 (Side conversing)

4 MR. DEVEAUX: Just a moment, Your Honor.

5 (Side conversing)

6 Q In your deposition -- deposition, you actually said that it
7 could have had that label on it, didn't you?

8 A You've asked me that twice today, sir. Yes, I said it was
9 conceivable that it could have been marked. I didn't see one.

10 MR. DEVEAUX: No more questions.

11 THE COURT: Thank you. You may cross-examine,
12 counsel.

13 CROSS EXAMINATION

14 BY MR. GARY:

15 Q Agent Birt, you're the special agent in charge, or you were
16 the special agent in charge of the Fort Richardson CID office?

17 A At the time of this event, yes, sir.

18 Q And is it your job as the special agent in charge to review
19 all reports of an incident?

20 A The reports that are prepared by CID, I do review. Yes,
21 sir.

22 Q And in this incident, Agent Jakeway prepared his report;
23 correct?

24 A Yes, he did.

25 Q Did Investigator Wisel prepare a statement or a report?

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1 A Mr. Jakeway, Mr. Wisel, Agent Lowery. After the situation
2 was diffused, there were a number of police officers in and out
3 of the area. Primarily, the searching was done by the plain
4 clothes men, which were the four people I talked about.

5 Q Okay. And where -- where did you go to search for weapons?

6 A I was actually pretty jacked up on adrenaline and I didn't
7 do a whole lot of searching. I was mostly directing the search
8 and maintaining the gun that I had in my hand. I did look up
9 in the upstairs bedroom briefly, but obviously Jakeway had
10 located, you know, the guns that were in the gun cabinet.

11 So --

12 Q And you were directing because you were the special agent
13 in charge?

14 A Yes.

15 Q Now you were upstairs. Was Agent Jakeway with you
16 upstairs?

17 A Yes, sir. He was, some of the time.

18 Q Was he in the bedroom?

19 A Yes, sir.

20 Q Now describe for us the situation when -- just before Agent
21 Jakeway located the video tape.

22 A As I recall -- and it's been some time -- we were basically
23 looking around, you know, looking in the closet, you know,
24 logical places you might find a gun. And I was in the bedroom.
25 I don't remember specifically what I was -- I guess I was

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1 searching, but I don't know where. I don't recall at this
2 point. It's been several years. And I remember him leaning
3 over next to the gun cabinet, picking something up from behind
4 it and holding it up. It appeared to me to be a video tape.

5 And as I said, we've -- we've worked together for a number
6 of years over three different duty stations and we kind of have
7 a non-verbal shorthand. He kind of knows how to finish my
8 sentences and that type of thing. And I think the inference
9 that we made at the time was, you know -- it's articulated
10 later on for the clarity -- but the inference that he and
11 both -- he and I both thought at the time was gosh, you know,
12 this could be important because we had a guy who just tried to
13 kill himself. And some of the training manuals that we've
14 dealt with in situations we've seen before, people had left
15 notes in various places.

16 And we had no idea whether Charlie Shepherd's suicide
17 attempt this time was a spur-of-the-moment, you know, heat-of-
18 passion kind of impetuous act, or whether or not Charlie
19 Shepherd had in fact contemplated suicide and planned suicide
20 for a long time because my only contact with him was 15 or 20
21 minutes prior. That's all the background I had. We thought it
22 was logical to assume that there were potentially a suicide
23 note on that, and I told him to check it out.

24 Q So you didn't know that he didn't plan this long in
25 advance?

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1 A All we knew was what we were told when we drove up. So --

2 Q So when you saw the video tape, the video tape, I think you
3 said on direct examination, seemed out of place?

4 A It did. The gun cabinet didn't seem to be, you know, a
5 kind of place that you would have a video tape.

6 Q And it was in the bedroom where Charlie Shepherd was;
7 correct?

8 A That's correct.

9 Q So it was, in your mind, it was reasonable to assume that
10 it may contain a taped suicide note?

11 A That's what I thought. Yes, sir.

12 Q And even though Agent Jakeway didn't say it -- but it was
13 reasonable for him also to assume that it contained a taped
14 suicide note?

15 MR. DEVEAUX: Objection, Your Honor.

16 THE COURT: I'll sustain the objection.

17 BY MR. GARY:

18 Q After Agent Jakeway bent down to pick up something in the
19 area where the -- the tape was located, he came back up and
20 held up the video tape; correct?

21 A A video tape. Yes, sir.

22 Q And you could see that video tape when he held it up in the
23 air?

24 A Yes, sir.

25 Q And it didn't contain a label, did it?

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1 A I didn't see anything, sir. I just saw a black VHS tape.

2 Q You didn't see a label?

3 A Right.

4 Q And what did Agent Jakeway do next?

5 A He exited the doorway. And then past the stairs is another
6 doorway into the children's room. And it's probably no further
7 than, you know, where Agent Jakeway's sitting today. And he --
8 there was a TV set much like I guess the orientation of that
9 monitor on the desk over there, the side facing out towards the
10 hallway and the -- the screen facing into the room. And he put
11 the VCR tape into a machine, pressed a couple of buttons,
12 stepped back, looked at the screen, pressed another button and
13 then ejected the tape and brought it back.

14 Q And how long, again, did all this take?

15 A Ten, 15 seconds max.

16 Q Now you didn't include this in your report, the information
17 about the video tape; right?

18 A That's correct.

19 Q Why not?

20 A It wasn't germane to what we were investigating. It didn't
21 have any evidence on it.

22 Q And when Agent Jakeway came back into the room after
23 viewing the video tape for 10 or 15 seconds, what did he say to
24 you?

25 A As I expressed earlier, he -- it was -- it's kind of crude,